

Arizona Real Estate and You

(A Consumer's Guide)

a publication of
the Arizona Department of Real Estate

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Table of Contents

Commissioner's Letter	4
Chapter 1	
How to Use this Book.....	6
Chapter 2	
The Arizona Department of Real Estate.....	11
Commissioner, Real Estate Advisory Board, Organization. Real Estate Recovery Fund, CAT Team, Limits to authority	
Chapter 3	
You call him an “agent”	16
Agency law, Designated Brokers, Associate Brokers, salespersons, real estate commissions	
Chapter 4	
Selling Your Home.....	23
Selling your home yourself, a word on discrimination, gathering facts and figures, sprucing up, neighbor- hood walk, selecting an agent, preparing for buyers	
Chapter 5	
Listing the Property.....	30
Be sure you are ready, agent duties, open listing, “Exclusive” listing, “Exclusive Right to Sell” listing, net listing, parts of the listing agreement	

Chapter 6

Buying a House.....	35
Condominium, cooperative, town house, single family residence, unsubdivided land, homes in subdivisions, resale homes, taking title, community property, community property with right of survivorship, sole and separate, getting ready, be upfront with your agent, a word on discrimination, use of Appendix A and Appendix B, deaths and felonies, sex offenders, the Seller's Property Disclosure Statement, estimate costs before making an offer, the offer procedure, the Purchase Contract, the counter offer, the acceptance	

Chapter 7

Negotiating the Deal.....	52
---------------------------	----

Chapter 8

Financing.....	55
Interest, Annual Percentage Rate (APR), preapproval versus prequalification, mortgage versus deed of trust, the loan market, conventional loans, adjustable rate mortgages (ARM's), "balloon" payments, FHA loans, VA loans, carryback loans, loan assumptions, predatory lending	

Chapter 9

The Escrow Period.....	67
Applying for a mortgage, appraisal, survey, pest inspection, home inspection, home warranty, final walk-through	

Chapter 10

Closing the Deal.....	71
Real Estate Settlement Procedures Act (RESPA), settlement statements, Affidavit of Property Value	

Chapter 11

After the Closing.....	74
------------------------	----

Appendix A

Where to go for Additional Information.....	75
---	----

Appendix B

Preliminary Checklist for Buying/Selling.....	81
---	----

Appendix C

Putting Your House in Order.....	85
----------------------------------	----

Index.....	88
------------	----

STATE OF ARIZONA**DEPARTMENT OF REAL ESTATE**

Elaine Richardson
Commissioner of Real Estate

Dear Friend:

If you are about to sell or buy a house, and you need some help navigating a smooth course through the real estate transaction process, you have picked up the right book! You may want to know what qualities to look for in a real estate Broker and Agent before you retain their services on your behalf. You may also want to know what the Arizona Department of Real Estate (ADRE) does to protect the public interest and what ADRE can do to help “you” in particular.

This Consumer Guide explains how ADRE protects the public interest by ensuring that licensees – both Brokers and their Salespersons (agents) – meet the minimum requirements of professional education in Arizona Real Estate Law and procedures to earn and renew a real estate license from ADRE. This book

also explains how ADRE is responsible for investigating complaints against Brokers, Associate Brokers, and Salespersons to make sure that professional services rendered to clients and to all parties in the real estate transaction conform to Arizona Real Estate Law and to the Commissioner's Rules.

In addition, the Department can provide you with public information about our licensees and licensed subdivisions, timeshares and unsubdivided land. ADRE also has a "Recovery Fund" to be used as a "last resort" to recover direct losses caused by your licensed real estate professional if you have gone to court, secured a judgment, but have been unable to collect.

Please use this Consumer Guide to learn as much information as you can about buying and selling real estate. You can stay ahead of the game if you are a better-informed buyer or seller. Please use this Consumer Guide for that purpose. Knowledge is power!

Sincerely,

Elaine Richardson
Real Estate Commissioner

Chapter 1

How to Use this Book

Most of us buy or sell a home only a few times during our lifetime. Often we buy or sell in different states, and we find that the procedures involving real estate transactions differ widely from what we experienced in other locations.

The purpose of this book is to provide a basic explanation of the real estate process in Arizona.

It is expected that those buying or selling real estate for business or investment purposes will seek knowledge and advice from professionals experienced in the legal, accounting, tax, and other aspects of investing. The complexities of these types of real estate transactions are beyond the scope of this book.

Some real estate transactions are simple and can be closed in a short period of time. Other transactions are exceedingly complicated and can take a year or more to be completed.

Whatever the reason for buying and selling, and no matter how simple or complex the transaction, there are many steps in the process that are common to most real estate transactions.



IMPORTANT!! The Department of Real Estate cannot offer legal advice. Nothing in this book should be construed as being in the nature of legal advice. All purchasers or sellers of real estate should seek professional advice if questions arise during the course of a real estate transaction.

Chapter 2 gives a brief overview of the Department of Real Estate. Even though the Department cannot offer legal advice, it has dedicated professionals available to answer general questions about real estate in Arizona.

Chapter 3 discusses the role of the real estate professional in Arizona. Licensed real estate salespersons and brokers in Arizona have considerably more authority and responsibility than in many other states. It is important for you to know what they can and cannot do. Most real estate transactions in Arizona are conducted with the assistance of licensed real estate professionals.

Chapter 4 describes the process of preparing a home for sale, determining the level of professional help needed to sell the home, and selecting a real estate agent.

Chapter 5 covers a discussion of the types of real estate listings and preparation for listing the property.

Chapter 6 covers some of the steps involved in buying a home, up to the point where an offer is made.

Chapter 7 gives an overview of the negotiations, offers and possible counter offers that often take place in bring-

ing buyer and seller to the point where they can agree on a final price and on final terms.

Chapter 8 discusses some of the common financing methods used in purchasing a home in Arizona.

Chapter 9 reviews the steps that need to be taken by both buyer in the time between acceptance of an offer and the closing of the transaction. (the “escrow period”)

Chapter 10 explains the real estate closing process.

Chapter 11 deals with the post-closing period.

Throughout the text you will find a number of highlighted web sites. These web sites can provide additional information on the topic being discussed.

Appendices following the final section are designed to provide sources and references for various steps in the real estate process.

Appendix A is a listing of sources of information for areas outside the authority of the Department of Real Estate.

Appendix B is a checklist of items that sellers should consider as they prepare to put their home on the market. The same checklist can serve buyers by providing questions they should ask about prospective properties.

Appendix C is a partial listing of steps a seller can take to place a property in the best position to sell.

The Index at the back of the book can serve as a quick reference guide for terms you might hear and the names of documents you might encounter along the way.

While the matters covered in a number of the following chapters are, for the most part, outside of the purview of the Department of Real Estate, the overview is meant to familiarize the general public about the nature of real estate transactions. For additional information, please go to the resources referenced in the text of this book and to the resource list provided at the end of the book.

Buying or selling a home can be an exciting experience. We don't do it that often. On the other hand, buying or selling a home can also be a traumatic, nerve-wracking and generally disappointing time. In almost all instances, the difference in the experience is directly due to the knowledge and preparation of the participants. Take a little time to learn and prepare for buying or selling a home. You will be well rewarded for your effort.

A word about gender as used in this book. We all realize that the real estate profession is practiced by both men and women. In order to avoid constant repetition of "he" and "she" and "him" and "her", we have, mostly, used the masculine gender to refer to all real estate professionals. That said, if you have comments or suggestions on how to make this book a better source of information for home buyers and sellers, please feel free to contact the Department at www.re.state.az.us

Good Luck and Good Selling or Good Hunting!!!!



A final word of caution. Many individuals and firms will represent you, work with you, or work for you in completing a real estate transaction. There are real estate brokers and agents, lenders, title companies, appraisers, and home inspectors to name just a few. Each will have varying levels of responsibility but the final responsibility lies with **YOU** -- the buyer or the seller.

Chapter 2

The Arizona Department of Real Estate

The mission of the Department of Real Estate is to protect the public interest through licensure and regulation of the real estate profession in the State of Arizona.

The Department is funded entirely by fees charged to individuals engaged in the practice of real estate in Arizona. No taxpayer funds are used to run the Department. In fact, each year a portion of the fees are usually transferred to the General Fund of the state.

Commissioner -- The Commissioner of the Department of Real Estate is appointed by the Governor. The Commissioner must have prior real estate experience, but cannot hold an active real estate license while serving as Commissioner.

Real Estate Advisory Board -- The Legislature has established a Real Estate Advisory Board to provide “such recommendations as it deems necessary and beneficial to the best interests of the public.” The Board also provides recommendations on specific questions or proposals requested by the Commissioner. All recommendations of the Board are advisory in nature.

The Board consists of nine members who serve six-year terms. They are appointed by the Governor. Four of the members are real estate brokers, two members are engaged in subdividing real property, and three members are from the general public.

Organization of the Department -- In addition to a small administrative staff, the Commissioner manages four divisions.

The **Investigations/Auditing Division** investigates complaints and collects facts and evidence in those cases where there is a possibility that state law or the rules of the Department have not been followed, including allegations of illegal subdivisions and unsubdivided land issues. Auditors visit real estate offices on a regular basis to ensure: compliance with state statutes and rules; proper handling of trust accounts; and adherence to record keeping requirements.

The **Licensing and Education Division** reviews applications for a license to determine their suitability for a real estate license, reviews a potential licensee's declarations of prior criminal convictions or evaluates cases where fingerprints reveal criminal histories or a conviction record not disclosed by the applicant. The division issues licenses when all requirements have been met.

The Licensing and Education Division is the principal contact with the approximately 65,000 individuals engaged as real estate, cemetery and membership campground salespersons and brokers. There are more than

170 schools providing real estate pre-licensure and continuing education courses.

The primary responsibility of the **Subdivisions Division** is to register developments for the sale of subdivisions and to follow up with developers to be sure that the developers do what they say they are going to do. This division examines subdivisions to determine general compliance with state law and representations made to the public and to the Department by the developers. It issues Public Reports for subdivisions and unsubdivided lands. Public Reports contain numerous pages of information about the proposed development. If six or more lots are involved, a Public Report must be issued by the department before the seller makes any offers of land for sale. Prospective buyers must be given a copy of the Public Report before signing any purchase contract with the seller.

The **Administrative Actions Division** is the enforcement arm of the Department of Real Estate. It makes recommendations to the Commissioner when it has been determined that disciplinary action should be taken against a licensee or developer. These actions range from an Advisory Letter of Concern to making a referral to the Attorney General of Arizona.

The CAT Team -- In order to better serve our citizens, the Department has developed a trained Consumer Assistance Team, or CAT team. Bearing in mind that the Department does not offer legal advice, and that there are many areas in which the Department is prohibited by law from getting involved, we recognize the need for a “starting place” for citizens with questions about the

many steps involved in a typical real estate transaction. If our CAT team can answer the question, it will; if not, the team members will refer you to a source or sources that will be able to help. This team receives approximately 70,000 telephone calls and 1,500 written requests for assistance each year. This is also the team to call for requests to review Department files. You can reach the CAT at (602) 468-1414, extensions 225 or 520.

Web site -- You may wish to spend some time at the Department of Real Estate web site: www.re.state.az.us The Department is continually revising the site to better serve our citizens.

Real Estate Recovery Fund -- The vast majority of the over 65,000 real estate licensees in Arizona have no difficulty conducting their business within the guidelines established by state law and by the Commissioner's Rules. The Department maintains a Real Estate Recovery Fund for those instances where something does go wrong. Each time a candidate applies for an original (new) sales license, he is required to pay a \$10 fee to the Recovery Fund. Candidates for a new broker's license pay \$20. If the fund does not have a minimum balance of \$600,000 on June 30 of each year, the fund is rebuilt by means of a similar surcharge on licenses renewed during the following year.

The Recovery Fund serves as a "last resort" for individuals who feel they have been harmed by a real estate salesperson or broker. Licensees and corporations cannot file a claim against the fund -- only the public has access to these funds.

In order to be eligible to file, the affected individual(s) must first have filed a timely lawsuit and won a judgment, but been unable to collect on the judgement. Upon presentation of sufficient evidence that the damaged party has been unable to collect on the judgment, the Commissioner may authorize a payment from the Recovery Fund. Recovery is limited to \$30,000 per claim, a maximum of \$90,000 for multiple claims against one license. In the event of a payment from the Recovery Fund, the license of the responsible real estate professional is terminated. A new license will not be issued until, at a minimum, the former licensee reimburses the Recovery Fund for any amounts paid out.

Limitation of authority -- Finally, there are certain things that, by law, the Department cannot do. For example, the Department cannot get involved in disputes regarding real estate commissions, mortgage companies or lending institutions, construction defects, appraisals, homeowners associations, home inspections, or home warranties. For a “Where To Go” listing of these and other areas, please see Appendix A.

Chapter 3

You call him an “agent”

Chances are, the first thing you think about when buying or selling a house is the selection of a real estate “agent.”

You will notice, though, if you spend time on the Department of Real Estate’s web site, that there is no mention of real estate “agents.” The Department’s web site and Arizona real estate law do, however, mention “licensees.”

This is one of those areas where legal terminology gets in the way of the everyday use of our language. Let’s see what we can do to clear things up. First, let’s cover the types of licensees to be found in Arizona. Then, a little bit about a section of our law called “agency law.” After reading this chapter, the role of your “agent” should be more clear and understandable.

Arizona law requires everyone engaged in the practice of real estate to be licensed. These licensees fall into two categories.

Brokers -- A broker is the key figure in any real estate company. All real estate companies must have one broker who acts as the “the buck stops here” person for the company. This broker is referred to as the “**designated**

broker” of that company. The designated broker is responsible for maintaining the real estate office and the records in the office. He is also responsible for the activities of the associate brokers and the salespersons working for that real estate company. (See below.)

Many of the nationally known names (brands) in real estate have offices in Arizona. Think of them as franchises. They generally give each franchise a designated area to serve, and there may be a number of offices in that designated area. There are also Arizona-based companies with multiple offices. Even though a real estate company has one or more offices in a number of cities or suburbs, all of these offices fall under the responsibility of a single designated broker.



Remember, there is only one designated broker for a real estate company -- no matter how big that company is or how many hundreds of licensed salespeople it has.

At the other end of the spectrum are the small real estate companies with only a handful of salespeople. The same rules apply -- every real estate company must have a designated broker.

Brokers for the large firms are not generally found “on the street” dealing with people interested in buying and selling homes. In smaller real estate companies, however, the designated broker may well have a number of customers and clients.

Associate Brokers -- Associate Brokers are experienced licensees who have passed the broker's examination but are not designated brokers for a company. Associate Brokers often assist the Designated Brokers on the management side. They may or may not be actively involved with buyers and sellers.

The holder of a broker's license may start his/her own real estate company, acting as the Designated Broker for that company.

Licensed Salespersons -- By far the largest group of real estate professionals are the "licensed salespersons." These are the folks you probably refer to as "agents." The salespersons work closely with potential buyers and sellers, but they must be affiliated with a Designated Broker.

A real estate licensee, acting as either as a salesperson or as an Associate Broker, performs actions on behalf of the Designated Broker. A listing contract, for example, may be taken by a salesperson, but the listing contract actually belongs to the Designated Broker. A salesperson can work with only one Designated Broker at a time. If the salesperson moves his license to another company, the listing contract, unless other arrangements are made, remains with the original Designated Broker.

This distinction, though, is usually transparent to the buyer or seller of real estate. In many instances the buyer or seller never actually meets, or sometimes even knows about, the Designated Broker. It is the licensed salesperson that the homeowner selects to sell his home and it is

the licensed salesperson that the potential home buyer selects to help him find a home.

All candidates for a license to engage in real estate transactions must be at least 18 years of age and must attend a state approved real estate school. The schooling consists of 90 hours of classroom instruction. The student may pass a test administered by the school and then must pass a test administered by the state. They must then fill out a background questionnaire and submit fingerprints. If all requirements are in order a license is issued and that license is valid for two years. During each two-year period, a licensee must take twenty four hours of continuing education courses in order to be eligible to renew his license.

A licensed salesperson who has practiced for at least three of the past five years is eligible to take the broker's examination. Again, a 90-hour course of study must be completed and a state approved examination must be taken and passed. Professionals holding a broker's license must also take continuing education classes in order to renew their licenses. The broker's license is also valid for two years.



It is interesting to note that a licensed salesperson or Associate Broker is never actually in physical possession of his real estate license. Instead, the license is delivered to the Designated Broker by the Department of Real Estate. If the licensee ceases to be affiliated with a real estate company, the license is returned to the Department until the licensee requests that it be assigned to another Designated Broker.

Agency law -- Real estate transactions in Arizona are governed by something called “agency law.” Agency law is concerned with any “principal-agent” relationship; a relationship in which one person has the legal authority to act for another. It is based on common law and “case law” developed through court cases.

In terms of agency law, the Designated Broker is the agent in all transactions, making all salespersons sub-agents of the Designated Broker. The agent (Designated Broker) delegates the authority to the subagent (the salesperson) to perform the duties necessary to represent the client (either the buyer or the seller).

When a licensed salesperson takes a listing or performs some other service for a potential buyer or seller, on behalf of his Designated Broker, he is acting as a “general agent” of the Designated Broker. He is a general agent because he could be performing a wide range of duties, from taking listings, to conducting open houses, to managing properties.

Commissions -- One of the most common topics in a real estate transaction concerns the commission paid to a licensed real estate professional. **Commissions are always a matter of negotiation between the seller and the real estate company.** There is no such thing as a “standard” or “regular” commission. In fact, it is a violation of federal anti-trust regulations for brokers from different companies to agree to charge a specific commission rate.

Within a real estate company (and remember that some real estate companies have many branch offices), it is permissible for management to discuss commission rates and even to establish a commission rate for that company, but there can be no discussions or decisions about commissions with other real estate companies.

Depending on the ups and downs of the real estate market, a consumer may find a wide range of commission rates available. Further discussion of commission rates may be found in Chapter 4.

As indicated previously, persons holding a valid license to engage in the practice of real estate in Arizona have responsibility and authority greater than their colleagues in many other states. In fact, Article 26 of the Arizona Constitution specifically grants licensees the legal authority to fill out and complete any and all documents pertaining to virtually all real estate transactions.

To assist them in the performance of their duties, many real estate professionals are affiliated with the National Association of REALTORS® and the Arizona chapter, the Arizona Association of REALTORS®. The term REALTOR® is a registered collective membership mark used by those real estate professionals belonging to this national organization.

Another tool frequently used by real estate professionals is the Multiple Listing Service. The MLS® program was developed by the National Association of REALTORS®. An MLS® listing is not, in fact, a listing contract at

all. It is a marketing tool used by members of the real estate profession to share information about listings they have taken. When you list a house for sale with a REALTOR®, you will probably be asked to provide information to be input into MLS®. As a prospective home buyer, you and your real estate professional will most likely consult the MLS® for properties that meet your home buying criteria.



The following chapters will use “agent” in the context with which you are most familiar, that of the licensed salesperson you are working with when buying or selling a house. Remember, though, that the generic use of the term “agent” is different from the legal use of the same term.



The Department of Real Estate may work in conjunction with the Arizona Association of REALTORS® and the National Association of REALTORS®, but it does not regulate them. This distinction is very important as the Department of Real Estate does not have authority over any contract, document or form used by these organizations other than to conform to state laws. The Arizona Department of Real Estate does not require a licensee to be a REALTOR®.

Chapter 4

Selling Your Home

Selling your home is a big step. Once you've decided to sell your home, you next need to consider options for actually managing the sale of the property. There are a number of options available to you. Following are some of the most common.

Sell the home yourself -- Selling a home without any outside assistance at all is, at first, an attractive option. You are in total control of who comes to see your house, when they come to see it, and you always know what is, and isn't, being said to prospective buyers about your property. You conduct all of the negotiations. And, you can potentially save thousands of dollars in commission costs.

On the other hand, you're now in charge of establishing a price, putting up signs, doing any necessary advertising, making arrangements to show the home, holding "open houses," establishing the qualifications of prospective buyers, negotiating the final price and taking the "deal" through to closing. Selling a home involves knowledge of techniques to get the best price and it involves some relatively complicated procedures along the way. The risk of making a mistake is not insignificant. You may have

a good percentage of the family assets invested in your home and you want to be absolutely sure nothing goes wrong with the sale.

Some real estate companies have been established specifically to assist homeowners who want to sell their own home. They are generally referred to as “For Sale by Owner” firms. These companies provide a menu of services for the homeowner to choose from. At one end, the homeowner might only be interested in buying a few “For Sale” signs and picking up copies of the documents that will be required. At the other end of the spectrum is a supervision of the entire process that ends up being not all that different from what is offered by a traditional real estate firm. As can be expected, the fees that are charged will vary with the services performed. These fees are often charged up front -- whether or not the home is actually sold.



Remember, Arizona state law requires anyone engaged in performing real estate services for others to be licensed, so the principals of any “For Sale by Owner” companies will have to be licensed real estate brokers. These brokers and their companies could just as easily manage a traditional operation -- they have chosen instead to specialize in helping homeowners sell their own homes.

Another option is to negotiate with a traditional real estate company for a less than “full service” assistance package. In this case, a seller may be able to deal with the real estate company on a contingency basis; that is, fees are due to the real estate company in the event that

the house is sold. Again, the services provided by the real estate companies could vary. One common use of real estate companies in this manner is for the homeowner to list, market, and negotiate the sale of the home and then use the real estate company to manage the transaction through the closing of escrow.



A special word on discrimination --

Whether you sell your home yourself or use an agent, a number of pieces of Federal and State legislation prohibit discrimination on the basis of race, color, religious preference, sex, disability, familial status, or national origin. If you offer your property for sale, you must be willing, with very few exceptions, to sell it to any person or persons who meet the terms of your offer. Failure to do so can result in, at a minimum, extremely heavy fines.

Using a real estate agent -- Most people, however, use real estate firms when both buying and selling. Buying or selling a home is a time consuming process - even with professional help. If you decide to use a real estate firm to sell your home, you might think that your first step is to find an “agent.” But, there are several things you can do even before selecting your real estate agent that can save both time and stress as you go through the steps necessary to sell your home.

Gather some facts and figures about your current home -- A number of prospective buyers are going to be interested in many things about your home before the sale

is completed. Real estate agents will want to know quite a bit; potential buyers will have other questions; lenders, appraisers, building inspectors and perhaps others will have a need for facts and figures.

By gathering some of this information early, 1) you won't have to do it later on when things could get much busier for you and 2) just gathering the information could help you and your real estate agent arrive at a more appropriate asking price for your property.

If you haven't lived in your house for too many years, the file folder you created when you purchased the home is a good place to start. While you and your real estate agent will want to verify what's in the folder, much of your work may have been done for you by the previous owners and the professionals they used to help sell the house to you.

A sample listing of facts and figures to gather may be found in Appendix B. The items listed in Appendix B are by no means the only ones you will want to consider, but the list should give you an idea of what will be needed and should provide a good starting point.

Spend some time “sprucing up” -- Depending on the condition of your home, you may well want to spend a small amount of time and money “putting your home in order” before putting it on the market. Take a walk around the home. View it from the standpoint of a prospective buyer. Use Appendix C as a guide to identify those small things you can do to get the most for your home.

Drive or walk around your neighborhood -- Make a determination as to how well your home compares with other homes in your neighborhood. If you were purchasing a home in your neighborhood, would your home be one of the homes you would choose? Is it one of the nicer homes in the area, or are there many others that better present themselves? An honest and objective evaluation may help you and your real estate agent arrive at an appropriate listing price for your home.

Select a real estate agent -- There are as many ways to select a real estate agent as there are real estate agents from which to choose. Can you remember the name of the agent who helped you find the house you are living in now? If you had a good experience with him, you might want to consider using him again, this time to sell your home.

Perhaps you know a friend, relative or neighbor who recently bought or sold a home. Most good real estate agents derive a substantial portion of their business from referrals -- that is, they get business referred to them by satisfied clients and customers. Before making a choice, though, be sure to consider geography. A real estate agent who works mainly in Tucson might not be the best choice for someone buying or selling a home in Globe.

There is nothing wrong with interviewing several real estate agents before selecting one you think will work well with you.

Prepare for visits from buyers -- The homes we live in from day to day are not necessarily the homes we

would want to show to prospective buyers. Kitchen counters crammed with pots, small appliances, etc., distract from the overall view of the kitchen. Similarly, walls filled with paintings, or shelves crammed with knickknacks draw attention away from what might otherwise appear to be spacious areas. If you smoke in the house, or if you have pets, you might not notice the smell, but non-smokers, and potential buyers who don't have pets, most certainly will.

Mostly the world is filled with honest people, but it doesn't make sense to tempt fate. Your jewelry box doesn't need to be in plain view during a visit, nor does your valuable stamp or coin collection.

Finally, take a look around your house for items that you don't want to include with the sale of your home. Items of personal property are excluded in the sale of real estate but what is, and what is not, personal property can often be misinterpreted and can result in some contentious moments during the selling process. Generally speaking, if something is moveable and not permanently attached, it is personal property.

That shed in the back yard? If it's bolted to a foundation, it's probably real estate; if it just rests on the ground or a foundation, you may be able to take it with you. The fancy water softener or reverse osmosis system? Most likely real property. Draperies and window shades? If the drapes and window shades are fastened with hooks or snaps, they may be personal property. But the mounting hardware attached to the walls is probably real property. (Most real estate contracts make fairly clear distinctions as

to what “goes” and what “stays” with the property.

If you have a particular item that you think might be real property and you want to take it with you after the sale, you have two options. You can exclude the item when you prepare the listing for the property. Or, a better solution might be to take down or replace these items with substitutes before the property is listed and shown.

Your real estate agent can give you professional advice in this area.

OK!! You’ve gathered information, you’ve spruced up your property, you’ve driven or walked the neighborhood, you’ve selected a real estate agent, and you know what to do when prospective buyers visit your home. You’ve reviewed your home for items that you want to exclude from the sale. Now you’re ready to list the property.

Chapter 5

Listing the Property

You are ready to list your property for sale. But first, here are some general comments about what you are about to do.

Be sure you are ready -- A LISTING AGREEMENT IS A CONTRACT. As such, you should be sure you are familiar with ALL of the terms and conditions of the contract before you sign. Your listing contract will expire if certain conditions are not met by a certain time; you and your broker can modify the contract if you agree to do so; you and your broker can even agree to cancel the contract. But you can also be held legally liable to carry out your end of any agreements you made when you signed the listing contract.

For example, your real estate agent earns his commission when he presents you with a buyer who is ready, willing, and able to meet the terms of your listing. If you have second thoughts about selling your home, and you and your agent have not mutually cancelled your listing, you could be liable to pay the commission to the real estate agent even though you don't sell the home.

You may remember that in Chapter 3 we said that licensed salespersons carry out their duties as a “general

agent” of their Designated Brokers. Your listing contract will be with the broker, not with the salesperson. In the listing contract, you are retaining the professional services of the Designated Broker (and the licensees working for him, including your real estate “agent”). The Designated Broker will be your “special agent;” his special assignment is to find you a buyer for your home.

You are what is referred to as the “principal” or “client.”

Your agent owes you a number of things when you sign a listing contract. Among other things, he owes you:

Loyalty -- He has to put your interest ahead of other interests, including his own. He can’t buy your property without your consent. Within the limits of the law, he can’t disclose information about you that could affect the sale of your property. But, the seller has certain disclosure obligations to the buyer. When the seller has a duty to disclose to the buyer, the broker has the same duty to disclose to buyers, even if the seller instructs the broker not to disclose the information.

Reasonable care -- Your agent must demonstrate the skills and knowledge expected of him. He could be held liable for losses due to his negligence or incompetence.

Obedience -- He must carry out your instructions, such as not showing the home on Sunday if that is your wish, but he cannot carry out illegal instructions.

Accountability -- Your agent must maintain and retain applicable records and he must keep your funds separate from other funds.

You also have responsibilities. You must tell the truth about your property, you must bargain in good faith with any prospective buyers, and you must pay any agreed upon commission if the terms for earning that commission are met.

Types of listings -- There are a number of ways to list the property with a real estate agent. The most common ways are as follows:

The “Open Listing” -- In this type of listing, the seller enters into listing agreements with a number of brokers. Whoever sells the house gets the commission. In the meantime, if the seller finds his own buyer for the house, no commission is owed to anyone.

While this might seem like a good deal for the seller, think about it for a moment from the perspective of the real estate agent. There is little incentive to invest time and money in marketing the property when there is no promise of a commission. There is also the possibility of disputes among agents as to who provided the buyer for the property.

Open listings are not often used in residential sales.

The “Exclusive Agency” listing -- This type of listing is a modification of the open listing. In an exclusive agency, the seller contracts with only one real estate

company, promising to pay a commission if a buyer is found. But, the seller reserves the right to sell the property on his own and pay no commission.

The “Exclusive Right to Sell” listing -- In this type of listing the seller contracts with one real estate company and guarantees the broker a commission if the property is sold, no matter who (including the seller) brings a buyer to the table. With this type of listing the broker is allowed to use the Multiple Listing Service® and there is incentive for the agent to invest time and money in marketing the property. This is the most common type of listing.

The “Net Listing” -- This type of listing is illegal in some states. While it is legal in Arizona, it is not often used. In a net listing, the seller sets an amount that he wants to receive from the sale and agrees to give the broker any excess proceeds. A net listing strains the obligation of the broker to obtain the best deal for the seller because the broker’s commission can vary so widely. Under some circumstances, (the broker accepts a very low offer), it is even possible for a broker to lose money on the transaction.

Parts of the Listing Agreement -- A listing agreement does not have to be on a special form. It could even be handwritten. In Arizona, all listing agreements must, however, be in writing. The listing is a personal services contract. All listings must: 1) be written in clear and unambiguous language; 2) fully set forth all material terms, including the terms of broker compensation; 3) have a definite duration or expiration date, showing

dates of inception and expiration; and 4) be signed by all parties to the agreement.

Virtually all listing agreements in Arizona use preprinted forms created by the regional affiliates of the National Association of REALTORS®.

Listing agreements may contain many pages and have several dozen paragraphs, but all create a contract for the personal and professional services of the broker and the licensees who work for the broker.

The typical listing agreement employs the broker to sell the property at a specified price. In return, the seller agrees to sell the property at the specified price and to pay the broker an agreed upon commission. The seller also agrees to provide material information concerning the property that could be of interest to potential buyers. Such information includes defects in the building and liens and encumbrances against the property.

During the listing process, the seller and the real estate agent will most likely compile information necessary for the property to be entered into the MLS®. Some of the information can be provided by the agent if the seller doesn't have it at hand (legal descriptions, names of school districts, for example), and some of the information will have to come from the seller (the amount of the loans against the property, etc.).

With the listing agreement completed and signed by all parties, your real estate agent is ready to begin selling your home.

Chapter 6

Buying a Home

There are a number of options available to you when you are thinking of buying a new home. Are you thinking of a “condo”, a “town house”, a “co-op”, or a separate single family residence?

A **condominium** or “condo” is generally one of a number of units in the same building or a complex of buildings. Condo units are generally thought of as “apartment size,” although some can be quite large.

Condominium owners have “horizontal rights,” which means that they have no rights either above or below their premises. They have a proportional interest in all of the common areas. There is usually a condominium owners association that manages the common areas.

Taxes are assessed individually on each unit. Generally condo owners can sell their units to whomever they wish.

A **“townhouse”** is usually a units separated from another unit by a common wall. As with the condominium, there is usually a homeowners association that deals with the common areas. Townhouses are also taxed separately. A major distinction between condos and townhouses is that in a townhouse the owners have what are known as

“vertical rights”, that is, they own everything beneath their home down to the center of the earth (subject to state laws) and everything above the house to the edge of the atmosphere (subject also to other laws).

A **cooperative** or “co-op” is an arrangement in which tenants do not own the space they live in; instead they own stock in a corporation that owns all of the units. The corporation is made up of all of the tenants. The corporation pays expenses such as taxes and each tenant pays his proportional share. When co-ops are sold, the corporation sometimes has a “first right of refusal” on sales. In other cases, the corporation may have the right to approve the new shareholder/owner.

The remainder of this chapter assumes the buyer is interested in a **separate single family residence**. When land is discussed, it is assumed that the land is being purchased with the intention of building a single family residence on that land.

Sometimes we use the term “new house” to refer to any house other than the one we are currently living in. In real estate jargon, though, a “new house” is one that has just been built, or at least has not had anyone live in it before. Homes that currently have owners are listed on the real estate market as “resale” homes.

Buying a new home -- Buying a new home involves an approach to purchasing real estate that is significantly different from the approach used in buying a resale home. New home sales may be divided into two categories -- those that are in subdivisions and those that are not.

Unsubdivided Land -- When buying unsubdivided land, the prospective purchaser needs to be particularly cautious. Not all land is “buildable.” Access could be difficult, water may or may not be available in a form acceptable to you, utilities may or may not exist.

Home buyers interested in purchasing unsubdivided land for a residence might want to consult with their builder or architect prior to purchasing the land.

New homes in subdivisions -- Arizona law defines a “subdivision” as six or more parcels of land of less than thirty-six acres each.

Before land in a subdivision may be offered for sale, the owning entity must file with the Arizona Department of Real Estate and obtain a Public Report. Before the Public Report is issued, the owners may take lot reservations and up to a \$5,000 deposit, but they can’t actually transfer title to the land. As a buyer, be sure you receive, read and understand your Public Report before you sign any agreement to purchase.

The Public Report is a comprehensive document covering a number of disclosures such as:

- characteristics of the subdivision
- nearby airports
- utilities
- streets, roads and drainage
- common and community recreational facilities

- local services such as schools, public transportation, medical, police, fire protection and ambulance service
- taxes and assessments
- property owners' associations
- adjacent land uses

A developer can be denied approval of the Public Report for a number of reasons, including being in poor financial condition.

Prospective home buyers in subdivisions generally have access to “model homes” that demonstrate the range of options the purchaser has available in that subdivision. In many subdivisions the lots must contain homes built by a designated builder. Indeed, it is builders who often purchase the land for the subdivision in the first place.

The entity developing the subdivision will often coordinate financing for the new home buyer. Depending on the market at the time, a prospective buyer may be able to negotiate items such as home features and financing costs.

Not all developers will pay a real estate commission on land or home sales. If you are using a real estate agent to help investigate new home opportunities in subdivisions, you might want to clarify how, and if, the real estate agent will be compensated for his time, effort, and expertise.

Resale homes -- Most of us are more comfortable with the process of buying a resale home than we are with any of the other home buying opportunities. During a lifetime we may buy and sell up to a half dozen or more

homes. But, because we often move from state to state, the exact steps we take in purchasing a home may differ significantly.

Just as it is not absolutely necessary to use the services of a real estate agent in selling a home, it is not a requirement that you use an agent when you buy a home. On the other hand, since the seller pays the commission on the sale of his home, using a real estate agent to buy a home should not add to the cost of the home. (Unless, of course, you think you can get the seller to agree to a lower price and the seller's agent to agree to a lower commission.)

Many real estate agents will work with prospective home buyers without a contract because if they can demonstrate that they are the "procuring cause" for introducing you to the seller, they will qualify for a portion of the commission on the sale. Other agents might want you to execute a "Buyer-Broker Exclusive Employment Agreement." This document, prepared either by the Arizona Association of REALTORS® or by an individual broker, is for the buyer what a listing agreement is for the seller. The advantage of signing this agreement with a real estate agent is that it may motivate the agent to work steadily on your behalf, knowing that if he does his job he will qualify for a commission. The drawback is that it limits prospective purchasers to the services of only one real estate company.



A middle ground position is for the purchaser to offer to execute the Buyer-Broker Exclusive Employment Agreement when the agent has a number of properties to show the purchaser. The Agreement can be limited to the one or two days necessary to view the properties. If an offer is subsequently made and accepted, the real estate agent will have qualified for his commission.

An agent's knowledge of the area in which you are looking for a home should be a key criteria in selecting a real estate agent. An agent with experience in a geographic area can not only advise you on what price to offer for a home, he can also explain the advantages and disadvantages of homes in particular locations and neighborhoods.

In most cases the Designated Broker (and the agent) representing the seller will be different from the Designated Broker (and agent) representing the buyer. But remember, there is only one designated broker for a real estate company, so if an agent for XYZ Realty in one office takes a listing and an agent for XYZ Realty in another office provides a buyer, both agents will have the same Designated Broker.

Because a broker has a responsibility to act in the best interests of his clients, and in this case the Designated Broker has to represent the best interest of both the buyer and the seller, there is a potential for conflict of interest. When an agent represents both parties in a transaction, he is acting as a “**dual agent**”. Dual agency is illegal in some states. Dual agency is legal in Arizona, but a Commissioner's Rule states that in the case of dual agency, the

agent has to obtain prior written consent of both parties. As you might expect, the Arizona Association of REALTORS® has a form that covers this situation.

Decide how you want to “take title” -- You don’t have to decide how to take title before beginning your search for a new home, but being able to provide this information to your agent means one less item to deal with during the home buying process. If you need to consult with your legal or tax advisors, this is a good time to do so. The most common forms of taking title to property are discussed below.

Arizona is a **community property** state. Generally speaking, this means that whatever is acquired by one spouse in a marriage is equally owned by the other spouse. The only exceptions are items owned before marriage; items acquired during the marriage in which one of the spouses specifically gives up ownership; and items acquired during the marriage by only one spouse as a gift or inheritance.

Community property with right of survivorship is a form of title in which, upon the death of one spouse the property passes automatically to the surviving spouse without having to go through probate. This form of holding may have tax advantages.

Joint tenancy with right of survivorship may be used by any two natural people. This form of title also passes ownership interest to the surviving party without probate.

A **sole and separate** holding is used by a single individual or by a married individual in those cases in which the other spouse has given up claims under community property.

Getting ready -- Spend some time driving around the neighborhoods where you are interested in considering a purchase. If you want to live near a particular grocery store, restaurant, or other place of business, check out their locations in terms of the neighborhoods you have selected. You might want to do a morning or evening “test” drive from the prospective neighborhood to your place of employment and back.

Make a note of the homes for sale and the agents and brokers representing the sellers.

You might be able to save yourself (and your agent) a good deal of time and inconvenience by determining in advance how much debt you will be able to handle on your home purchase. Check out lenders in your area, meet with them and share your general thoughts about the type of house you would like to buy. Some lenders will ask you for credit and earnings information and will actually “prequalify” you for a mortgage of a certain amount. Being prequalified can be a powerful bargaining chip during negotiations with sellers. Lenders that will not prequalify will generally, at a minimum, give you a fairly narrow range of the amount you should be able to qualify for.

Some real estate agents will require a prospective buyer to be prequalified.



It is far better to know in advance what your limits are than to find out after you've fallen in love with a dream home that is beyond your reach.

You may have access to many of the MLS® listings via the Internet. In Maricopa county for example, go to www.azcentral.com. Click on the “Food and Home” link at the top of the page and then click on “Search for Resale Homes” on the left hand side. (Or, you can go directly to www.azcentral.com/rre/search.php) You will be taken to a portion of the site sponsored by the Arizona Regional Multiple Listing Service®. From this site you can search based on a number of criteria (ZIP Code, school district, city, number of bedrooms, square footage, etc.) Oftentimes you will be able to look at a number of pictures of properties that meet your requirements and you can call up a map with a fairly specific location. Exact addresses are not provided.

Be up front with your agent -- Whether you do advance work or not, when you sit down with a real estate agent, you should be as specific as possible about what you absolutely need, what you'd like to have, and what you don't need. A fireplace is a nice amenity, but if it is on your “absolutely need” list, your agent might not show you homes that meet every other requirement but lack a fireplace. Be honest about what you can afford. It helps neither of you for your agent to take you to homes that are obviously out of your price range.



A special word on discrimination -- Your real estate agent faces heavy fines and penalties for any actions that conflict with state and federal anti-discrimination laws. It is perfectly legal for you to want to live in a certain ethnic neighborhood, however if you ask your agent to show you homes where only a certain race or religion predominates, you are putting the agent in a difficult situation. If this is important to you, it is something you need to do yourself.



Deaths and felonies on the property, sex offenders -- Arizona law states that sellers and real estate licensees have no liability for failure to disclose that the property was ever the site of a natural death, a suicide, a murder or a felony. The presence of a sex offender in the area of a property does not have to be disclosed by either the seller or the seller's agent. If this is important to you, you may have to consult other sources for the information you seek. For example, you can consult the sex offender registry at www.azsexoffender.org

If all goes well, your agent will contact you with a number of properties that meet the requirements you set forth. Your agent will work with the sellers' agent or agents to arrange suitable times to visit the properties.

It is very important that you be on time for appointments to visit properties. The sellers have probably arranged to be out of the home during your visit so you and your agent can candidly discuss the property. Common cour-

tesy in this area can pay dividends later on if you decide to make an offer on the property.

Prior to the visits, you should prepare a list of questions you might want to ask the agent or have the agent ask the owner. The questions found in Appendix B might be a good place to start.

During the visit, use Appendix C as a guide to making a thorough observation of the property.

Bring a sketchbook to draw traffic patterns and room layouts. It's surprising how layouts and designs can run together after viewing several homes.

If you have a digital camera and want to take pictures, be sure to have your agent get permission in advance from the seller. If the seller does not want to grant permission, perhaps he will take the pictures and send them to you.

Seller's Property Disclosure Statement (SPDS)

The name of this document is pronounced "spuds." This document is completed by the seller and provides information about the house to buyers. It covers much of what is found in Appendix B, but in some cases it provides even more information.

You've toured the properties, scouted the neighborhood, talked things over with your agent -- and you decide it's time to make an offer.

Be sure you are ready -- When you make an offer on a piece of real estate, you will almost always be asked to make a deposit of earnest money (see below). If your offer results in a contract (see below), you are legally bound to fulfill the contract. If you then decide that you really don't want the house, and can't reach an amicable agreement to cancel the contract, you could legally be required to follow through with the purchase. Alternatively, you might forfeit any earnest money (known as "liquidated damages") as settlement for the claim the seller might have against you.

(There are "rights of rescission" that allow you, under certain circumstances, to cancel a contract without penalty. Your real estate agent can provide guidance in this area.)

Estimate your costs before making an offer--

Being able to make a loan payment on a new home purchase is one thing, but there are other costs associated with a home purchase. While some of the costs might be able to be financed, there are other costs that will require out-of-pocket cash expenditures between the time of purchase and the closing. Your real estate agent can help you in this area.

The "Offer" procedure-- There is a set procedure for presenting offers on real estate. **Your agent is required to present all offers**, whether or not they meet the terms of the original real estate listing. You and your agent will prepare the offer. Your agent will then contact the seller's agent, informing him that he has an offer to be presented. If your agent cannot contact the seller's broker or any licensed representative of the broker

within 24 hours, your agent, with the seller's permission, may contact the seller directly. The response to the offer presentation, (acceptance, rejection or a counteroffer) are then communicated back to you.

The Purchase Contract -- Arizona law requires all real estate contracts to be in writing in order to be enforced in court. Most resale purchase contracts use the form designed by the Arizona Association of REALTORS®. This form has grown over the years and is over a half dozen pages in length. It is revised and updated from time to time.

The basic parts of a home purchase are as follows: 1) An offer is made, 2) there may or may not be counteroffers, 3) an offer is accepted, 4) the acceptance of the offer is communicated to the other party. When these conditions have been met, a contract exists.

The first part of the Purchase Contract is headed "Receipt." In this section, you indicate the amount and the form of the earnest money that will accompany the offer. While there is no legal requirement for earnest money, it is customary to show "good faith" by putting a portion of the purchase price in escrow at the time the offer is made.

Any earnest money deposit is to be held by the broker until the offer is accepted. The earnest money is then placed with an escrow company or in the broker's trust account. If the offer is not accepted, the earnest money is returned to the person(s) making the offer.

The second section of the Purchase Contract is the “Offer” section. It is here that you indicate how much you are willing to pay for the property. This may be the price on the listing (the “asking price”) or it may be less. In some cases, it may even be more than the asking price. It is in this section that the purchaser lists any personal property that he would like to have included. A date for the closing of escrow will also be identified.

The third section, “Financing,” provides information to the seller about how the buyer intends to pay for the property. There is language that says that the offer is contingent upon being able to qualify for a loan. While not required, this language appears in nearly all purchase contracts.

In the section “Title and Escrow” you will name the title company and/or escrow company to be used. This is a buyer option. Your real estate agent should be able to provide you with information in this area. If you still haven’t determined how to take title, you can state that you will provide this information before close of escrow.

The remaining sections of the Purchase Contract cover topics such as “Disclosures”, “Inspections and Warranties”, and “Additional Terms and Conditions.”

If you have not yet sold your current home but you need the proceeds from that sale to close on your new home, your agent will most likely suggest that you include language in the “Additional Terms and Conditions” section making your offer contingent upon the sale of your current home by a certain date.

On the last page of the Purchase Contract is the section entitled “Acceptance”. It is here that the seller either accepts the offer or indicates that a Counteroffer is being made.

If the offer is for less than the asking price and the terms set forth on the listing, the seller may refuse to accept the offer.

When you make the offer, you will include an expiration date and time by which time you want the offer to be accepted or refused. If, before your offer expires, the seller is presented with an offer that is greater than the your offer, he may accept the second offer.



The date and time that the offer is valid can be a strategic tool when used properly by the interested buyer. When it is a buyers market, the buyer might make an offer lower than the asking price, but give the seller a number of days to consider the offer. The seller might initially be disappointed with the offer, but might later decide that “a bird in the hand is worth two in the bush.” With a short time to react, the seller might simply have rejected the offer.

In a seller’s market, the buyer might make an offer and then give a very short time window for the offer to be accepted. This strategy reduces the opportunities for the seller to “play” one interested party against the other in the hopes of getting a greater price for the property.

Unless the offer price is equal to or greater than the listing price, and assuming the offer is not rejected outright, it is common for the seller to make a **counter offer** to you, the would-be purchaser. Perhaps the seller counters with a price that “splits the difference” between the asking price and the offered price. Perhaps the seller will offer to include additional personal property such as a refrigerator or riding lawn mower. Perhaps the seller will offer to pay for some of the closing costs normally paid by the buyer.

In these cases the seller’s agent contacts your agent to present the counter offer proposed by the seller. You may accept the counter offer, (thus completing the “acceptance” phase), you may make another counter offer, or you may decline the counter offer. If the counter offer is declined, the earnest money you put down is returned to you by your agent and there is no sale.

If the communication between all parties (the seller, the seller’s agent, the buyer, and the buyer’s agent) has been completely honest and truthful, everyone should pretty much know where everyone else stands. In these cases it is not at all uncommon for the buyer to accept the seller’s counteroffer. On the other hand, sometimes even with good communication, it may take a number of counteroffers before both sides can agree on the deal.

Once the Purchase Contract has been signed by both parties, the agent of the last party signing communicates the signing to the agent of the other party. This is the “acceptance” phase. When the communication is made, there is a legal contract.

The seller's broker must review and initial the contract within five days (remember it was most likely a licensee that helped the seller). Further, the broker must keep a copy of the contract for five years from close of escrow or termination of the contract.

If all went well, escrow opens and a number of other people and companies are about to become involved in your real estate transaction.

Chapter 7

Negotiating the Deal

Even more so than in many other transactions, the old phrase “everything is negotiable” certainly applies to real estate transactions.

Negotiations are dependent on a number of factors, including the status of the real estate market, the professionalism of the real estate agents and the willingness of the parties to negotiate.

In a “down” market, (a buyer’s market) when real estate is not moving and prices are holding steady or even declining, the advantage is certainly with the prospective buyer. Some prospective buyers may be inclined to make unusually low offers, (the practice is known as “lowballing”) in hopes of striking a once in a lifetime deal. While this technique sometimes works, consistent “lowballing” is likely to jeopardize the buyers relationship with his real estate agent who is investing time and effort with little prospect of ever earning a commission.

There are other negotiating techniques available to buyers in a down market. Substantial earnest money deposits, providing evidence of prequalification for a loan, the absence of contingencies, offering to pay for some of the

closing costs usually paid by the seller, and setting a quick closing date (especially if the seller has already purchased another home) all serve to show the seller that, while the price might not be what he wanted, the risk to completing the deal is small.

A potential buyer should also find out how long the property has been on the market. A house on the market for an extended period of time might indicate an asking price that is out of line with the market.

It could also be helpful to find out if there have been reductions in the asking price during the period of the listing. A price reduction is often an indication of the seller's desire to sell.

If there have been other offers on the property that have been refused by the seller, it would be helpful for you to know what the offers were and why they were refused. Perhaps you can fashion an offer that overcomes some of the seller's objections.

Sellers also have negotiating options in a "down" market. Perhaps there is personal property that could be included. In some cases the seller may even consider a "carryback" loan for a portion of the selling price. (See more about carryback loans in the chapter on Financing.)

In a sellers market, an "up" market, when properties are for sale for only a very short time and prices are rising steadily, a prospective buyer has fewer negotiating opportunities. The same techniques a potential buyer might use in a "down" market are applicable in a sellers market,

but they are not likely to have the same effect. The buyer faces the very real possibility that if he does not buy on the seller's terms, someone else will. In some instances the best negotiating technique in an "up" market is to offer the asking price and then give the seller only a very short time to respond. At least the buyer reduces the chances of the seller shopping the offer around in hopes of finding a better deal.

In an "up" market the seller often doesn't need to negotiate. If the asking price is a fair one and buyers are lining up, the seller and his agent simply need to pick the best of the offers.

You can get a sense of the real estate market by doing some research, reading the summaries of transactions in the paper, and talking to colleagues who have recently bought or sold. Your best source, though, is your professional real estate agent. He or she is in the business of representing both buyers and sellers on any given day. Picking an agent whose advice you can trust, communicating honestly and openly with your agent, and maintaining a flexible and reasonable attitude can all go a long way when negotiating a real estate transaction.

Chapter 8

Financing

Your parents and grandparents may well have financed their purchase of a home through the same bank they used for their checking and savings accounts. In some cases they may have gone to one of the only banks in town and the bank manager might have been an old family friend.

Times have changed. Home financing is a big business today and home buyers have an unusually wide range of options from which to choose when it comes time to financing a home purchase.

Whatever the option, the home financing process involves a number of common elements.

Interest versus Annual Percentage Rate -- Most of us are familiar with interest rates. Interest rates are the percentage of the loan that we pay in interest. But what about the **Annual Percentage Rate (APR)**? The APR is different from the interest rate -- it is higher.

It is common practice for lenders to charge up front fees on loans. "Points" are an example. A point is one

percentage point of the amount to be financed, For example, three points on a loan of \$200,000, is \$6,000. Points are usually paid up front and may represent an out of pocket cost to the buyer at the time of closing. Lenders use this technique to increase their yields and maintain competitive positions. Points may be deductible, along with interest, on your tax return.

As a rule of thumb, 1 point is equal to $1/8\%$ increase in the effective interest rate. So, an interest rate of 6% with no points might actually be better than a rate of 5.8% and three points.

Lenders may also make a charge known as a “loan origination fee.” This is the lender’s commission to cover the cost of putting the loan together. Loan origination fees are not tax deductible.

These additional charges, and others, when added to the interest rate, make up the APR. As you can see, the APR is almost always a much more important number than the interest rate.

Preapproval versus Prequalification -- Doing homework on financing sources is key to a smooth real estate transaction. Many lenders will agree to “check you out” and based on their preliminary analysis, pretty much agree to financing a house with a certain size mortgage. This process is known as “preapproval.” Other lenders will, based on verbal information from you, give an estimate of what they think you can afford. This process is known as “prequalification.”

The “mortgage” versus the “trust deed”

Before trying to obtain a loan, it might be helpful to understand the real estate financing documents used throughout Arizona.

Anyone borrowing money to buy real estate will sign two documents for the lender, one to create the debt and the other to secure the debt to the property. The first document, the promissory note, is the document that creates the debt and contains the borrower’s unconditional promise to repay the lender what was borrowed. The note is universally used throughout the United States.

The second document, however, will be chosen by the lender based on state law and the ease with which a foreclosure may be made. Most states use a mortgage to secure the debt to the property, and that is the document that most borrowers sign in other states. If the lender has to foreclose, the lender must sue the borrower and take the process through the court system.

But in Arizona, almost all lenders use a different document called a “trust deed” or “deed of trust.” The borrower signs the trust deed and gives it to the lender to secure the debt to the property. The borrower is known as the “trustor,” the lender is the “beneficiary,” and there is a third-party representative of the lender called the “trustee.” The trust deed will be recorded with the county recorder to place a lien on the property.

The trust deed grants the trustee a severely limited right to sell the property in foreclosure should the trustor breach his or her promises in the note and the trust deed. But don't worry: state law heavily regulates trustees. The only time a trustee could sell the property would be under a written demand from the beneficiary, and the only event that could trigger such a demand would be a breach of contract by the trustor, such as the non-payment of the loan.

Typically, the trustor repays the loan as agreed and the trustee records a "reconveyance deed" or "deed of reconveyance" to release the lien that was created when the trust deed was recorded by the beneficiary.

The loan market

There are two segments to the loan market. The first is the primary market, or origination market, where the lenders fund the loans to the borrowers. This is composed of the lenders we're familiar with: banks, savings and loan associations, credit unions, mortgage companies, and the like. The second is the secondary market, or warehousing market, where investors purchase blocks or packages of loans that were created in the primary market and then issue securities backed by those blocks of loans. Here is where we find the Federal National Mortgage Association ("Fannie Mae"), the Government National Mortgage Association ("Ginnie Mae"), and the Federal Home Loan Mortgage Corporation ("Freddie Mac").

Homeowners are often notified that their loan has been "sold," which means that it has been sold by their

originating lender to an investor or resold from one investor to another.



Ever wonder how this is done? How does the secondary market know that the information they are getting from the primary market is complete and accurate? Well, when you took out your loan, you most likely agreed to verify information on your loan (the amount of the loan, the interest rate, and the amount remaining) to anyone purchasing the loan. In legal parlance, this is known as an “estoppel certificate” or a “certificate of no defense.” It prevents you from claiming you don’t owe the amount you owe and it assures the loan buyer that the information is correct.

There are various loan programs available to the homebuyer today. Most lenders offer FHA-insured loans, VA-guaranteed loans, and conventional loans.

FHA-insured loans are backed by the Federal Housing Administration, which means that if a lender has to foreclose on a property and loses money as a result, FHA reimburses the lender for all of the foreclosure loss. Many people use the FHA programs because of their low downpayment requirements.

VA-guaranteed loans, available to qualified veterans, are backed by the Department of Veteran Affairs. Should a lender on a VA loan suffer a foreclosure loss, VA directly reimburses the lender for some or all of the loss. Veterans often use this program because there is usually no downpayment required at all.

Conventional loans, which do not have any government backing, are strictly between the borrower and the lender. But they often provide greater flexibility in the terms of the loan and the amount that can be borrowed because there are few government regulations on their origination.

The first step in the loan process is for the borrower to determine how much he or she wants to borrow.

Loan underwriters' guidelines generally say that the total of the monthly **principal** payment, the monthly **interest** payment, a pro-rated share of the property **taxes**, and pro rated **insurance** (PITI) should not be more than 28% of the monthly family gross income. Other debts such as credit cards and other loans, when added to the PITI, should not be more than 36% of monthly gross income.

There are a number of ways to estimate your PITI. The listing for the property should give you the property taxes, and sometimes the insurance. Software programs, internet sites, your real estate agent, or a loan underwriter can quickly calculate the PITI for you.

When applying for a conventional loan, there is usually a maximum amount that can be borrowed. The guidelines today are around 80% of the appraised value or the selling price, whichever is lower. Loans of greater than 80% generally require some sort of mortgage insurance. There are companies that specialize in mortgage insurance. The borrower pays for the insurance, but the lender is the beneficiary of the insurance if the borrower

does not pay. The insurance generally covers only that portion of the loan in excess of 80% of the value and the requirement for private mortgage insurance (**PMI**) generally goes away when the loan is reduced to a level satisfactory to the lender.

The next step is to secure an **appraisal** for the property. The appraisal is done by an appraiser selected by the lender, but paid for by the borrower.

In the event that the appraisal does not cover the required loan amount, the borrower can cover the difference by making a greater down payment on the loan. It is sometimes worthwhile to make the larger down payment in order to avoid having to make PMI payments.

Next, the borrower should consider the types of loans that are available. The most common is the 30 year fixed loan, where the interest rate is fixed for the entire 30 year period. Borrowers wishing to reduce their interest payments (which are deductible on Federal income taxes) may opt for a slightly higher monthly payment, but one that pays off the loan in 15 years.

There are also **graduated payment mortgages**. In this type of mortgage, the payment may be low for the first several years and then increase on a specific schedule for the remainder of the loan. The advantages are the lower initial payment rate and knowledge of the final payment.

Adjustable rate mortgages (ARM's) mortgages have a beginning interest rate that is adjusted (upwards or down-

wards) depending on an index. (Indexes commonly used include treasury bills and the costs of funds.) The lender adds a “margin” to the index to arrive at the rate. ARMs are generally adjusted once a year.

To prevent interest rates from rising too far, ARMs typically have what is known as a “6-2 CAP,” which means that the interest rate cannot go up more than six percent from the starting rate over the life of the loan, and the interest rate cannot go up more than two percent in any one year.

So called **“balloon”** loans have a large lump sum payment due at the end of the loan. Sometimes balloon loans have lesser amounts applied against the principal -- in effect the borrower is paying mostly for interest until the balloon payment of the principal is due.

FHA insured loans -- The Federal Housing Administration has been in existence since 1934. It plays a significant role in financing homes by providing insurance to the lender that protects against a foreclosure loss.

Construction, resale, new home purchases, and refinancing loans are all available with FHA insurance. There is a maximum loan amount that varies from county to county. In Maricopa county, for example, the current maximum is slightly more than \$160,000.

When someone finances a loan under FHA guidelines, they must put up at least 3% of the selling price, but some of that 3% can be applied to closing costs.

Loan insurance, the Mortgage Insurance Premium (MIP), is required on all FHA loans. The borrower must pay this premium up front as 1.5% of the loan amount (it can be added to the amount of the loan). In addition, there is an annual fee of .5% of the loan amount. MIP generally goes away when the loan amount is reduced to 78% of the original purchase price.

To get an FHA loan, there has to be an FHA or Veterans Administration (VA) approved appraisal of the property. If the home does not appraise for the selling price, the buyer can either make up the difference, negotiate a price reduction with the seller, or void the contract and get his earnest money returned.

There are qualifying ratios that the FHA applicant must meet. These ratios are different from the ratios used when determining eligibility for conventional loans. PITI (principal, interest, taxes and insurance) cannot total more than 29% of the family gross monthly income. When other household debt (car payments, credit card debt, etc.) is added to PITI, the total cannot be more than 41% of gross monthly income.

There are other FHA features, benefits and requirements. Your lender or real estate agent can provide additional information.

VA guaranteed loans -- Guaranteed loans are available to eligible veterans who received an honorable discharge and were on active duty for an appropriate period of time. For those serving after 1980, the time period is two years.

The VA does not actually lend money; instead it guarantees certain amounts in the event that the buyer defaults. There is no maximum loan limit, but the current guarantee is \$60,000, and lenders do not generally loan more than four times the guarantee amount without a down payment. So, most VA guaranteed loans are for \$240,000 or less.

The first step in applying for a VA guaranteed loan is to obtain a "Certificate of Eligibility." The VA looks at a potential buyer's cash, credit, and collateral. House payments, utilities and maintenance can be as much as 41% of gross monthly income, but the buyer must show that he has enough left over for normal living expenses.

If a veteran is eligible, the next step is for the VA to have an appraisal done. If the market value based on the appraisal is satisfactory, the VA issues a "Certificate of Reasonable Value." The appraisal on existing housing is valid for six months.

The VA also imposes additional requirements. The loan must consist of level payments, the buyer cannot be penalized for paying the loan off ahead of time and the origination fee cannot exceed 1% of the loan. The VA charges a funding fee to help recover losses on foreclosed properties. Any loan discount fees may be paid by either the buyer or the seller, but the discount fees cannot be financed. Other loan costs can be paid by either the buyer or the seller, but escrow costs and termite fees cannot be charged to the veteran.

Veterans can use their eligibility for future VA loans as long as they pay off the previous ones.

The “carryback loan” -- This form of home financing takes place when the seller agrees to make a loan to the purchaser, that is to “carryback” a portion of the purchase price. Offering this option to a buyer might be attractive to a seller for a number of reasons: tax issues, he doesn’t immediately need the full proceeds from the sale, the terms are more attractive than other forms of investment, or if the property cannot be sold without offering the carryback incentive. Transactions involving a carryback can be complicated and both buyers and sellers considering this option should consult with professional advisors.

Loan assumption -- Some existing loans can be transferred to a new borrower. Sometimes there are up front fees that must be paid to the lender and sometimes there can be an interest rate adjustment. **When assumption takes place, the new borrower is responsible for making loan payments but, unless the lender has released the original borrower from responsibility, the old buyer (the seller) may remain liable for the payments if the new buyer defaults .**



Home financing can be both complicated and time consuming. Effort spent shopping for the best package for you and then prequalifying or getting preapproval can save considerable time and stress later on.

Predatory lending -- The vast majority of lending institutions conduct their business in a fair and open manner. They lend money in exchange for a fair return.

There are some companies, though, that engage in what is known as “predatory lending” -- taking advantage of people to charge excessively high fees and rates of interest.

Take a look at these opening paragraphs from a guide to predatory lending prepared by the Arizona Attorney General’s Office:

“Deceptive lending is an all too common problem for Arizona residents. Three segments of our population are especially hard hit by predatory lenders: older Arizonans who have worked hard and built up, over time, the equity in their homes; minority consumers who tend not to use traditional banking services and do business with finance companies; and lower income families with less than perfect credit.

Whether you are getting a home equity loan, buying a house, refinancing your home or making home improvements, predatory lenders are ready to take your money and may end up taking your home. Predatory lending practices mean big bucks for the lender and a never-ending treadmill of debt for the borrower.”

The entire pamphlet, available at www.azag.gov/consumer/index.html is an excellent resource for information on these unscrupulous practices.

Chapter 9

The Escrow Period

The **escrow period**. That time between the acceptance of an offer to buy or sell and the time when everything finally comes together. This period is oftentimes emotional and stressful as telephone calls and documents fly back and forth between affected parties. Let's break this period down a little.

The buyer -- If the buyer has not been preapproved for a loan, the very first order of business is for the buyer to **apply for the funds** necessary to finance the home purchase. The buyer must state in the Purchase Contract a time by which the seller can expect to receive a copy of the **Conditional Loan Approval** prepared by the lender.

The lender will also need an **appraisal** on the property to be sure the property is worth what they are being asked to lend. The length of time required for an appraisal can vary based on the condition of the real estate market. The lender will select the appraiser, but the borrower will pay for the appraisal fee.

There will also be a requirement for **homeowner's insurance** on the new home. The lender will issue a

Conditional Loan Approval without evidence of a homeowner's policy, but escrow will not close without the homeowner's insurance being in effect.

Title Insurance -- There are two types of title insurance that come into play when a home is sold. The seller usually pays for an **Owner's Policy**. The Owner's Policy protects the seller in case there are subsequent title defects. A one-time premium is charged. The policy is generally issued in an amount equal to the purchase price.

The buyer usually pays for a **Lender's Policy**, (sometimes known as "ALTA", or "broad form".) This policy protects the lender and is generally more extensive than the Owner's Policy. It is generally issued in the amount of the loan. Again, a one-time premium is charged.

The escrow company will provide the buyer with a Commitment for Title Insurance. If there is anything in the title search that could cause you to want to cancel the purchase contract, you have five days in which to contact the seller regarding the exceptions that you are disapproving. You can't disapprove of exceptions that you knew about when you signed the contract. Title searches are most likely to reveal easements, liens, deed restrictions and Covenants, Conditions and Restrictions. (CC&R's.)

You may receive advice that a **survey** is not required when purchasing a home in an established urban area. At the very least, though, you should review the subdivision or plat plan, determine the dimensions of your property, and confirm that you are getting what you are paying for. Surveys of vacant land are even more important.

You will need to arrange for a **termite inspection** and a **home inspection**. Most real estate agents will have suggestions for professionals with experience working in the area of your new home. These inspections should be done as soon as possible after signing the purchase contract.

If the seller is not providing a **home warranty**, you might want to purchase one. Home warranties come in many “shapes and sizes.” Some cover only the bare minimum of conditions and almost all have “pre-existing” clauses. Even if the seller is providing a home warranty, you might want to pay the difference to upgrade your home warranty coverage. Ask for a copy of the policy and review it before the close of escrow.

Sometime during the escrow period you will have an opportunity to conduct a “**final walk-through**.” This will be your last chance to inspect the property before the closing, so you will want to do the walk-through as close to the closing as possible. The seller is obligated to turn over a property in which all major components are in working order, so take the time to verify that they are. Check the heating and air conditioning. Flush the toilets, run the faucets and the dishwasher. Check the lights and the electrical outlets. Once you close on the property, it will be nearly impossible for you to hold the seller responsible for anything that doesn’t work. And don’t bet on the home warranty. Some home warranties only cover events happening after the closing.



If something material or substantial comes up during the escrow period that leads you to believe that the home you are buying is not as was represented in the listing and the purchase contract, you may be able to cancel the contract or ask the seller to fix the problem. This can be a complicated area. Consult your real estate agent or attorney for guidance.

The Seller -- A seller has fewer items to watch over during the escrow period. The seller does have to provide reasonable access to the property for the appraisers, surveyors, termite inspectors, home inspectors, the buyer for the final walk-through, and the like. If the seller is providing a Home Warranty and has not already made arrangements, the details of the warranty will need to be finalized during the escrow period.

If the home being sold is in a planned community that has a homeowner's association, a copy of the CC&R's and additional related documents must be delivered to the buyer well before the close of escrow. If there are 50 units or less in the planned development, this responsibility rests with the seller. If there are more than 50 units, the homeowner's association must provide the documents, but they have to be notified to do so. The seller's agent will generally coordinate this step, but the responsibility rests with the seller.

Chapter 10

Closing the Deal

The actual **closing** of your real estate transaction (the signing of the documents that will officially transfer title) will probably take place in the offices of the title company or the escrow agent. It is not necessary that both buyer and seller be present at the same time. For example, the buyer could close during the morning and the seller could close sometime later the same day.

Many of the aspects of a real estate closing are governed by the federal **Real Estate Settlement Procedures Act of 1974 (RESPA)**. RESPA requires that both the seller and the buyer receive copies of **settlement statements** giving full disclosure of all of the costs involved in the sale. During the closing(s), each applicable item on the settlement statement is to be explained, as appropriate, to either the buyer and/or the seller. At the end of the closing, the seller conveys title to the property by means of a deed. And, at the conclusion of the closing, the seller receives the net amount of the purchase price, less deductions. The real estate company usually receives its commission at this time also.

The biggest deduction for the seller will probably be the commission due to the real estate broker. The seller will

have a deduction for the time he lived in the property and accrued, but did not pay for, property taxes. The same could be true for homeowner's association dues and other such items. If there are past due property taxes, the past due amount, along with any penalties, will be deducted from the seller's proceeds by the escrow company. There may be a deduction for utilities used, but not yet paid for.

The buyer generally will be charged for creating financial documents, most recording fees, title insurance, and fees such as the appraiser or home inspector (See Chapter 9). Because the buyer will eventually receive the property tax and perhaps the utility bills for a period of time when he did not actually live in the house, those deductions made by the seller for these items will be credited to the buyer.

Sometime during the closing, both the buyer and the seller will sign the **Affidavit of Property Value**. This document states the selling price of the property and it is required by law. The Affidavit of Property Value is one of a number of tools used by the county assessor in establishing assessed value for tax purposes.

When both the buyer and the seller have closed escrow, the proper documents are recorded with the county recorder by the escrow company.

The seller has received his proceeds; the buyer has paid for the property with either cash/and or a loan document; the commission has been paid; the documents are recorded. The deal is closed.



You will be asked to sign a great many documents during your real estate closing. You have a right to read each document and receive a full explanation -- no matter how long it takes. You are well advised to read, understand, and ask questions if necessary before signing the documents. **DO NOT CLOSE ESCROW unless everything has been resolved to your satisfaction.**

Chapter 11

After the Closing

If all went well with the negotiating process, the escrow period and the closing, there is little to be done after the closing except to enjoy your new home.

If you have a home warranty, either one you purchased or one provided to you by the seller, be sure you understand what is covered and what is not. Home warranties come with different levels of coverage; sometimes relatively modest items are covered, in other cases some relatively expensive items are not.

If you are planning to remodel or refurbish your new home, be sure to check with your local officials regarding requirements for permits, etc. You might get away with putting on an addition without getting a building permit, but down the road when you want to sell your home, the failure to be able to show permits could cost you much more than the current cost of the permit.

Enjoy your new home!!!

Appendix A

Where to go for.....

The following areas are not managed by the Department of Real Estate. The references found below may be used as a general guide to sources of information on the respective areas.

Appraisers -- Appraisers are licensed by the Arizona Board of Appraisal. You may contact them at:

Arizona Board of Appraisal
1400 W Washington Suite 360
Phoenix AZ 85007
(602) 542-1539
www.appraisal.state.az.us

Commission disputes -- By Arizona law, disputes on commissions are to be handled through the Arizona court system.

Contractor issues -- Contractors and issues relating to contractors are handled by the Registrar of Contractors. They may be reached at:

Arizona Registrar of Contractors
800 W Washington Street, 6th Floor
Phoenix AZ 85007-2940
(602) 542-1525
www.rc.state.az.us

Fair Housing -- The Department does not regulate Fair Housing issues. For the most part, these are Federal issues. The following links may be helpful:

www.usdoj.gov/crt/housing/title8/html

Federal Fair Housing Regulations
www.hud.gov/offices/theo/FHLaws/index.cfm

National Fair Housing Advocate Online
www.fairhousing.com/

HUD Fair Housing Assistance Providers
hud.gov/groups/fairhousing.cfm

US Civil Rights Act of 1964
www.dol.gov/oasam/regs/statutes/2000e-16.htm

Fair Housing, consumer law
consumerlawpage.com/brochure/fair-hse.shtml

City of Phoenix Equal Opportunity
Department
[www.ci.phoenix.az.us/CITZASST/
houseidx.html](http://www.ci.phoenix.az.us/CITZASST/houseidx.html)

Arizona Attorney General, Civil Rights
Division
[www.attorney_general.state.az.us/
civil_rights/index.html](http://www.attorney_general.state.az.us/civil_rights/index.html)

Homeowner's Associations -- There is no state agency that handles complaints about homeowner's associations.

Homeowner's association disputes must be pursued through the court system.

These types of complaints are addressed under Arizona Revised Statutes, Title 33.

For information about homeowner's associations and community association matters, the Bureau for Better Community Association and Management, a part of the National Institute of Community Management, has prepared a brochure. You can find this brochure at

www.nicm1.com/Art12001pt.htm

You may wish to contact the National Institute of Community Management (NICM) at 1-(800)-387-1099 (Arizona residents only) for guidance concerning a complaint issue.

Home Inspectors -- Home inspectors are regulated by the Arizona Board of Technical Registration.

Arizona Board of Technical Registration
1990 W Camelback Road, Suite 406
Phoenix AZ 85015
(602) 255-4053
www.btr.state.az.us

Home Warranties -- Home warranties fall under the jurisdiction of the Arizona Department of Insurance.

Arizona Department of Insurance
2910 N 44th Street, 2nd Floor
Phoenix AZ 85018
1-(800) 325-2548
(602) 912-8444
www.id.state.az.us

Landlord and Tenant Disputes -- There is no state agency that handles complaints about landlord and tenant disputes.

Landlord/Tenant disputes must be pursued through the court system.

For an overview of Arizona's landlord/tenant law by the Arizona Supreme Court, go to www.supreme.state.az.us/info/brochures/landlord.htm

The Secretary of State provides additional information at
[www.azsos.gov/public_services/publications/
Residential_Landlord_Tenant_Act/2002/
Landlord_Act.htm](http://www.azsos.gov/public_services/publications/Residential_Landlord_Tenant_Act/2002/Landlord_Act.htm)

Phone numbers that may be able to assist you in answering questions are:

Landlord Tenant-City of Phoenix
(602) 262-7210

Maricopa County Landlord and Tenant Hotline
(602) 257-8987

Neighborhood Services (Phoenix)
(602) 262-7344

Cities other than Phoenix and Mesa
(602) 269-3915

Title/Home Mortgage Insurance Companies -- Title and home mortgage insurance companies fall under the jurisdiction of the Arizona Department of Banking. They may be contacted at:

Arizona Department of Banking
2910 N 44th St, 3rd Floor
Phoenix AZ 85018
(602) 255-4421
www.azbanking.com

Real Estate Transactions in Mexico -- The Arizona Department of Real Estate does not have jurisdiction over real estate transactions that take place in Mexico, even if they involve Arizonans.

To obtain more information on how to avoid problems when engaging in such real estate transactions, please visit the Arizona Mexico Commission web site at:

www.azmc.org/realestate.asp?from=general

RESPA -- Questions regarding RESPA (Real Estate Settlement Procedures Act) should be addressed to:

Office of RESPA Enforcement
US Department of HUD
451 7th Street SW
Washington DC 20410-8000
(202) 708-050

Sex Offenders -- To search for registered Arizona sex offenders by name or ZIP code, please visit the Arizona Department of Public Safety's web site at:

www.azsexoffender.org

Appendix B

Preliminary Checklist for Buying/Selling



CAUTION: Do not consider this checklist to contain everything you need to know when buying or selling a home. The purpose of this list is just to get you started. Think that maybe this is too much work? You will be required to provide much of what is on this checklist, and in some cases, a good deal more, when you prepare the Sellers Property Disclosure Statement or “SPDS.” You will be required to provide the SPDS to buyers if you enter into an unmodified AAR® contract.

1. What is the legal description of your property? If you don’t have this information, your real estate agent can look it up, so don’t get worried if you can’t find it. On the other hand, most of Arizona’s counties have web sites that will allow you to get your parcel number and legal description.
2. Are there any recorded documents you don’t know about? Your real estate agent can help you here, but county web sites provide access to documents recorded on your property. It is unlikely that there will be a

lien or judgement that you don't know about, but if there is, better to find out about it before being surprised by the preliminary title report.

3. When was the home built? If your home was built before 1978, you will be required to disclose any evidence that lead based paint was used in your home. You will also have to give potential buyers a pamphlet (your real estate agent has them) warning of the dangers of lead based paint. Consult with your real estate agent if your home was built before 1978.

4. Who built it? Does it have an historic designation or is it in an historic district?

5. Are there any structural areas or defects that need attention?

6. Have there been any additions to the building? If so, when were they done? Who did them? Are there records of the necessary permits and inspections?

7. What is the age of the roof? If the roof has been replaced, who did the reroofing and when was it done? Are there currently any leaks or other roofing problems?

8. What is the age of the heater/air conditioner? With air conditioning being so critical in the Arizona desert climate, you should pay particular attention to the age, maintenance record, and present serviceability of the Heating, Air Conditioning, and Ventilation (HCVAC) mechanical systems of your current or intended home. If these units have been replaced, who did the job and

when? Would they have a record of service on the units?

9. If there is a pool, what are the ages of the heater, filter, pump, etc? If these units have been replaced, who did the job and when? Would they have a record of service on the units?

10. Are there any plumbing problems that a prospective home buyer would want to know about?

11. Are there any electrical problems that a prospective home buyer would want to know about?

12. What is the age of the water heater?

13. What is the age and the working condition of any of the following that will remain with the house: garbage disposal, washer, drier, range, refrigerator, microwave oven, garage door opener, etc.

14. Are there any warranties on the house or the appliances you will be leaving or transferring to the purchaser?

14. Is there a sprinkling or watering system? If so, how old is it, what kind is it, who installed it?

15. Have there been any claims against the homeowner's insurance since you bought the house?

16. If the house is in a homeowner's association, how much are the dues and when are they due? What does

the association do regarding the property and what does the owner have to do? How restrictive are the CC&R's or any other deed restrictions?

17. Are there easements on the property? An easement is the right of others to use your property. For example, a power company may require an easement to run power lines. During your period of ownership did you grant the right to anyone else to use your property? (You will receive much of this information on the preliminary title report.)

Appendix C

Putting Your House in Order



A number of real estate companies also publish home buyer/seller guidebooks. A short visit to several of these companies can provide you with additional information for preparing property for sale and for evaluating property that is for sale.

Outside the House

1. How does the roof look? Are there missing shingles or tiles? Is the roof clear of leaves, pine needles, and any other debris?
2. Are the rain gutters firmly attached? Do any of them leak? Are they clear of dirt and debris?
3. Does the fascia (the wood strips at the edge of the house) need painting?
4. Check the concrete area where the house meets the ground. Does it need a coat of paint?
5. Garage door. Does it work smoothly and quietly? Sometimes all a garage door needs is lubricant on the door and the movement mechanism.

6. Other doors and all windows. Do they work smoothly and quietly? Is all trim intact? Is there any glass that should be cleaned or replaced. Do the rollers on patio and other sliding doors need replacing?

7. The driveway. Check for cracks, missing pieces, bad stains, etc.

8. Shrubs, trees, and plants. Are the healthy plants trimmed and well groomed? Are there diseased and dead or dying items that should be treated or removed? Do trees touching the house need to be trimmed?

9. Sheds and other outbuildings. Do they show signs of care or abuse? If they are not permanently attached to the ground, are they centered on whatever foundation you are using?

Inside the House

10. Does the ceiling show signs of previous water stains or mildew from leaks or mold?

11. Are there any rooms with obvious need for re-painting?

12. Would the carpet benefit from a deep cleaning or shampoo before inviting in prospective buyers?

13. Are draperies and other window coverings clean and in good repair?

14. Is all plumbing and electrical in good working order?

Attic or Crawl Space

15. Is the insulation evenly and sufficiently distributed?

16. Are there any signs of recent termite infestation?



Consider cost in determining what to do and not to do in putting your house in the best condition to show and sell. Consult with your real estate agent before undertaking major projects such as repainting the exterior or painting more than one room of the interior. While you want the house to “show” well, it may be that the new owner will want to personalize the appearance of the house. If this is the case, you may not recover the cost of your investment.

Index

A

Adjustable rate mortgages 61-62

Affidavit of Property Value 72

Agency

 duties of an agent 31

 law 20

Annual Percentage Rate 55-56

Appraisal 61, 67

Arizona Association of REALTORS® 21

B

Balloon loans 61

Brokers

 Associate Broker 18

 Designated Broker 16-17

Buyer-Broker Exclusive Employment Agreement 39

Buying a home 34-50

C

Carryback loans 63

CC&R's 70, 84

Closing 71-73

Commissioner 4-5, 11

Commissions 20

Community property 41

Community property with right of survivorship 41

Conditional Loan Approval 67

Condominium 35

Conforming loans 58

Conventional loans 60-61

Cooperative ("co-op") 36

Counter offer 49

D

Deaths on the property 44
 Deed of trust 56
 Department of Real Estate 11–15
 Administrative Actions Division 13
 Auditing Division 12
 CAT Team 13-14
 Consumer Assistance Team 13
 Investigations Division 12
 Legal advice 7
 Licensing and Education Division 12-13
 Limitation of Authority 15
 Mission 11
 Real Estate Advisory Board 11-12
 Real Estate Recovery Fund 14
 Subdivisions Division 12
 web site 14
 Discrimination 25, 44
 Dual agency 40

E

Earnest money 46
 Escrow period 67–70
 Exclusive agency listing 31
 Exclusive right to sell listing 31

F

Federal Home Loan Mortgage Corporation 57
 Federal National Mortgage Association 57
 Felonies on the property 43
 FHA loans 59, 62-63
 Final walk-through 69
 For Sale by Owner 23-24

G

Government National Mortgage Association 57

H

Homeowner's insurance 67, 77

Home inspection 69, 78

Home warranty 69, 78

J

Joint tenancy with right of survivorship 41

L

Licensed salespersons 18-19

Listings 30-34

 Agreement 30

 Parts of 33-34

 Types 33

Loan assumption 64

Loan market 56-65

M

MLS® 21, 42

Mortgage 57

N

National Association of REALTORS® 21-22

Negotiating 52-54

Net listing 32

Non-conforming loans 58

O

Offer procedure 46

Open listing 32

P

Points 54-55

- Preapproval 56
- Predatory lending 66
- Prequalification 56
- Property listing 29–33
- Public Report 37–38
- Purchase contract 47–49

R

- Real Estate Advisory Board 11
- Real estate brokers 16
 - associate brokers 17
 - designated brokers 16
- Real Estate Settlement Procedures Act 71, 80

S

- Seller's Property Disclosure Statement (SPDS) 45, 81
- Selling your home 23–29
 - Sell it yourself 23–25
 - Using a real estate agent 25
- Settlement statements 71
- Sex offenders 43
- Sole and separate holding 42
- Subdivisions 36
- Survey 67

T

- Taking title 40
- Termite inspection 67
- Title Insurance 68, 79
- Townhouse 35–36
- Trust deed 57–58

U

- Unsubdivided land 37

V

- Variable rate mortgages 60
- VA loans 59, 63–65